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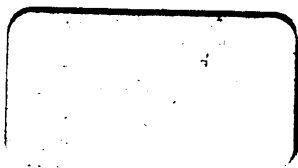
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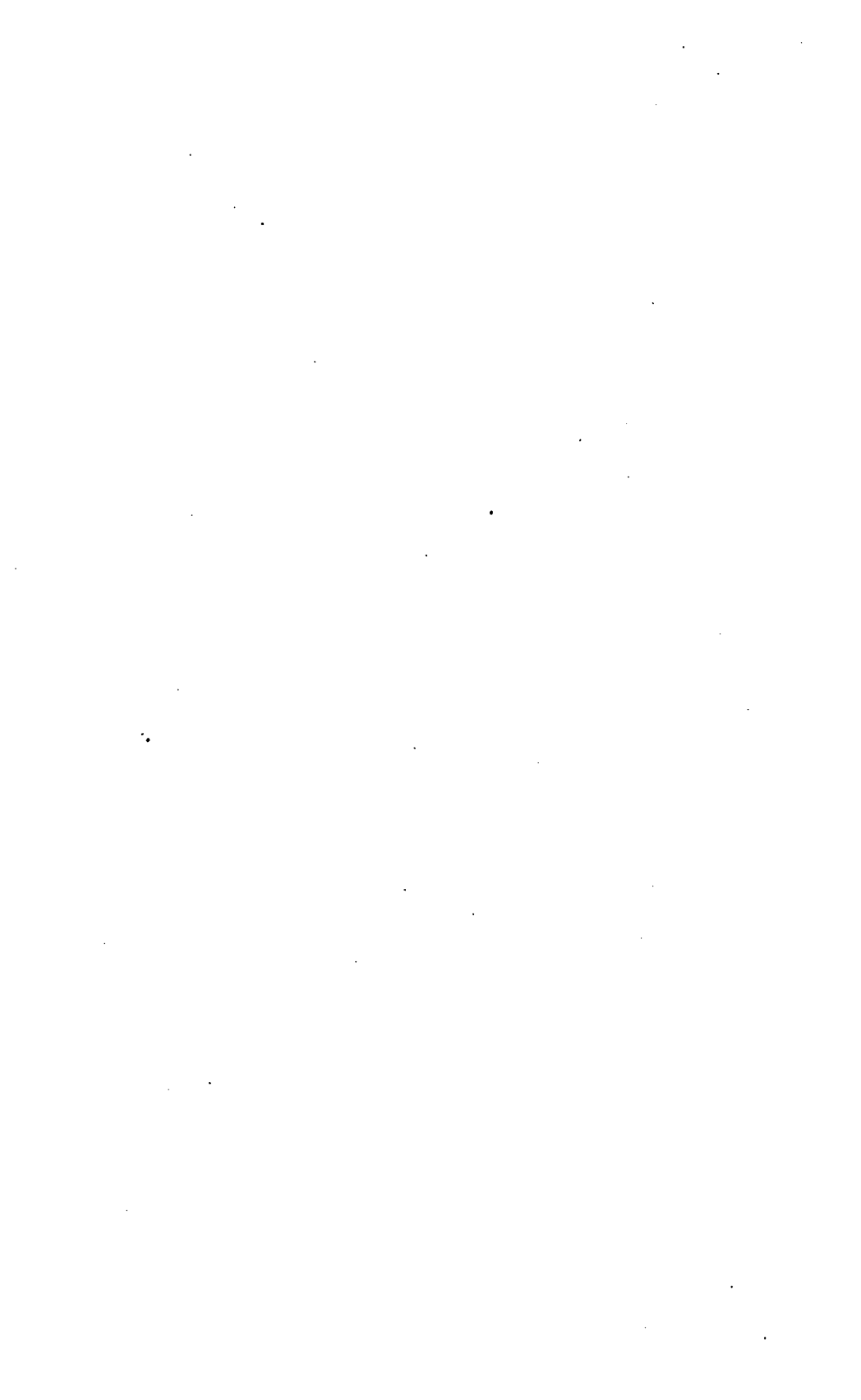




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HEARINGS

HELD BEFORE

U.S.C.H.

THE COMMITTEE ON THE PUBLIC LANDS
OF THE HOUSE OF REPRESENTATIVES

APRIL 29 AND MAY 1, 1908

334
128

ON H. R. 21412

A BILL TO ENCOURAGE THE
DEVELOPMENT OF COAL
DEPOSITS IN THE DISTRICT
OF ALASKA

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Wednesday, April 29, 1908.

The committee met at 10 o'clock a. m.

Present: Representatives Mondell (chairman), French, Smith, of California; Gronna, Parsons, Pray, Howland, Gaines, Robinson, Hamilton, and Hammond.

Present, also, Hon. W. B. Hoggatt, governor of Alaska; Charles H. Merillat, esq., representing the Matanuska coal locators; Richard Ryan, esq., D. A. McKenzie, esq., H. T. Herriman, esq., and others.

The committee, after disposing of other matters, proceeded to the consideration of the bill (H. R. 21412) to encourage the development of coal deposits in the district of Alaska.

STATEMENT OF HON. W. B. HOGGATT, GOVERNOR OF ALASKA.

The CHAIRMAN. Governor Hoggatt, do you happen to have with you a copy of the bill which this committee reported and which Congress passed last year for the relief of the settlers of the Matanuska field?

Governor HOGGATT. No, sir.

The CHAIRMAN. Have any of the gentlemen here a copy of the bill?

Governor HOGGATT. No; we have not. I will state, however, that it was practically the same as section 9 in the proposed bill, except that it had a clause toward the end which the Department and the President considered would enable a man or an association of men to assemble an unlimited number of areas granted under the bill.

The CHAIRMAN. I wish to ask you, Governor, whether this section 8d, which is approved by the Department, would afford relief to the Matanuska field? I refer to section 8d, page 7 of the report on the general coal bill.

Mr. GAINES. Mr. Chairman, can we not get a copy of the bill, so as to see what it is, and so that we may appreciate all the more what the Governor is going to say?

The CHAIRMAN. The gentleman has a copy of the report from the Department on the general coal bill; and on page 7 is the section 8d to which I refer.

Governor HOGGATT. I think it will take section 8d and section 9 also, on page 7 of the report of the Secretary of the Interior on Mr. Mondell's bill. While section 8 affords relief, it does not go far enough to clear title to the land that has already been located. Section 9 provides that those who take the benefit of this act shall relinquish all claim that they may have to land outside of the area of 2,560 acres; that before they can take the benefit of this act they must relinquish any other land that they may have in this field. So I think section 9 will also be necessary in the bill. You think not, do you?

The CHAIRMAN. I do not think it has anything to do with your situation there at all.

Mr. GAINES. What is the purpose of the bill, Governor?

Governor HOGGATT. The purpose of the bill is to enable these people who have gone in there and made locations of coal lands in 160-acre tracts to combine them to such an area as to make them workable—that is to say, 2,560 acres, which has been agreed upon by the Department and these people who have been in there, some of them, for the last six or seven years, trying to get title to these lands. They went there when the country was wild and very difficult to get into. No one man could have afforded to have gone in there and taken up 160 acres and complied with all the Department's rulings with regard to surveying and that sort of thing without the possibility of combining with some associates to get a larger area than 160 acres. I say that because this is unsurveyed land; and in 160-acre tracts it would have to be marked at the four corners of each quarter section and surveyed, so that it would cost them about \$25 an acre, including the coal-land price, to proceed to title for each 160 acres; and when they got that, if the holder was not in amity with his neighbors, he could not mine it and it would not be of any use to him.

Mr. GAINES. Do you mean to say, Governor, that you have to combine these several properties to get enough capital together to run?

Governor HOGGATT. To get enough area together?

Mr. GAINES. To get enough area; or is it both?

Governor HOGGATT. Both—both area and capital. These men conceived the idea, when these coal lands were discovered, that they could assemble a crowd of friends, each one take up 160 acres of land, and, after securing patents, that they could combine their several areas and proceed to engage in coal operations. About two years ago the Department ruled that any intention of that kind was sufficient cause to warrant the Department in refusing title to any of these locators. Consequently there has not been a title issued to a single coal claim in Alaska, and you can not take out a pound of coal anywhere in the country.

Mr. ROBINSON. The effect, as I understand it, is to limit the areas of coal operations there to 160 acres?

Governor HOGGATT. No; to limit it to 2,560 acres.

Mr. ROBINSON. I mean as the law now is?

Governor HOGGATT. As the law now is; yes.

Mr. ROBINSON. It limits it to what?

Governor HOGGATT. To 160 acres.

Mr. ROBINSON. That is what I say.

Governor HOGGATT. Yes.

Mr. ROBINSON. And one of the objects of this proposed legislation is to enable you lawfully to use a larger area?

Governor HOGGATT. Yes.

Mr. ROBINSON. You can not profitably operate a coal mine, usually, on 160 acres?

Governor HOGGATT. It would be absolutely impossible. It is the same as if I should come to the members of this committee and say: "Here, you ought to go into coal operation in Alaska," and each one of you would take up a separate claim, with the idea that when you got patent you would all go together, and each one would go down

in his pocket and furnish enough money to provide the development expenses. That is not permissible under the present law. That is the condition of most of those claims, nearly all of them; and the Department has refused to issue patents to any of them. It says it can not under the present law, and unless there is some relief coal can not be mined there.

Mr. GAINES. To what extent has coal been discovered up in Alaska?

Governor HOGGATT. Coal has been discovered in large areas all over the Territory. There are two fields of high-grade coal—the Bering River field, about 80 miles east of Copper River, which has a known area of approximately 45 square miles—

Mr. GAINES. What kind of coal?

Governor HOGGATT. There is bituminous coal and some anthracite. Then there is another field that has been discovered of coal of equally high analysis in the Matanuska Valley, which has about 45 square miles of known area.

Mr. GAINES. How far apart are these places where coal has been discovered?

Governor HOGGATT. About 250 miles in an air line. The way they would have to go by the present means of transportation it would be about 400 miles.

Mr. GAINES. They are that far apart?

Governor HOGGATT. Yes, sir.

Mr. GAINES. You spoke a while ago of having trouble about mining the coal, as I inferred, because one man would dig under another man's section. They could not very well do that if they were that far apart.

Governor HOGGATT. We can not mine coal at all now until we get patent, and the Department feels that there is not any claim up there that can be patented under the present law.

Mr. SMITH, of California. Because of the understanding that when it is patented it will be merged with the others?

Governor HOGGATT. It will be merged with the others to get sufficient area.

Mr. GAINES. To what extent would that put all the coal land up there under one management?

Governor HOGGATT. Oh, it would not put it under one management at all. There are probably fifteen or twenty groups of men in the Bering River field, and, as far as I have been able to learn, only one in the Matanuska field; and all the lands not already filed upon have been withdrawn from location until such time as Congress decides what shall be done with coal lands generally.

Mr. SMITH, of California. Is a locator obliged to apply for a patent within a certain length of time, or may he hold it as a mining claim for many years?

Governor HOGGATT. He can hold it, but he has to proceed as expeditiously as possible.

Mr. SMITH, of California. Could they not, without patent, form a working corporation and lease their coal lands to it?

Governor HOGGATT. No; they can not mine it. The Department will stop them anywhere before they get patent.

Mr. SMITH, of California. I thought a man was permitted to take out coal before patent.

Governor HOGGATT. Only such coal as he takes out in the development work; and the Department can stop him at any time it sees fit.

Mr. ROBINSON. Is it true, Governor, that mining operations are practically suspended there now?

Governor HOGGATT. Yes; they can not mine any coal at all.

Mr. ROBINSON. And that condition has existed for about two years?

Governor HOGGATT. Oh, yes. The Department changed its ruling two years ago. There has never been any coal mined. The development had not gone far enough along, but it was reaching a stage where they were about ready to begin mining when the Department made this ruling in regard to these combinations or associations. Usually it has centered around one man, who had his friends locate these areas, and they held that that was a technical violation of the spirit of the law.

Mr. GAINES. What law?

Governor HOGGATT. The law regarding coal-land locations—that you can not, in your imagination, have any idea in the future, or at any time prior to patent, of disposing of this land covered by your location, without violation of the law.

Mr. ROBINSON. They held substantially, as I understand it, that any single coal operation should be limited in area to 160 acres?

Governor HOGGATT. Yes.

Mr. ROBINSON. And that, judging from your experience and observation, is not sufficient to profitably operate coal mines?

Governor HOGGATT. Oh, it is absolutely impossible. Not only have they held that, but they have held that if a man took up this kind of a location he could not conceive in his mind in any way of the disposition of the 160 acres before patent without vitiating his claim or vitiating his patent.

Mr. GAINES. Governor, if this bill becomes a law, to what extent would it put the coal mines up there under one management?

Governor HOGGATT. Oh, there would be a dozen or more in the Bering River field.

Mr. GAINES. Competitive companies?

Governor HOGGATT. Competitive companies, so far as I have been able to learn—at least a dozen different crowds.

Mr. SMITH, of California. What is the means of transportation?

Governor HOGGATT. They have not any yet.

Mr. SMITH, of California. Then they would not mine the coal if they had the patent?

Governor HOGGATT. They can only develop at present. There is a railroad being built, and others in prospect, to the Bering River fields, and to the Matanuska fields, which are awaiting construction upon this issue of the coal lands.

Mr. SMITH, of California. If the lands proceeded to patent, then somebody would build a railroad?

Governor HOGGATT. Then somebody would build a railroad.

Mr. SMITH, of California. Probably the people who were behind the coal operation would be the owners?

Governor HOGGATT. No; I do not think so—not necessarily. They might be.

Mr. SMITH, of California. They would build it, if nobody else did, as one of the features of the production of coal. They would neces-

sarily have to do it; and then they would perhaps have the situation that we have in the eastern part of the country now—that the railroads would control the price of coal.

Governor HOGGATT. No; I do not think so, for this reason: Any railroad up in Alaska would have to be built under the general law. That law provides that the tolls of both freights and passengers shall be submitted to the Secretary of the Interior and approved by him before they can be collected.

The CHAIRMAN. And the general railroad-rate bill provides that no railway corporation shall own or mine coal.

Governor HOGGATT. Yes.

Mr. ROBINSON. Does that apply to Alaska?

The CHAIRMAN. Yes.

Mr. MERILLAT. Governor, the coal locations in the Matanuska field are all under Mr. Frank Watson and his associates; and the Alaska Central Railroad is under the direction of Mr. A. C. Frost and his associates—a separate and distinct set of men.

Mr. PARSONS. Governor, where are these railroads going to get their coal, then?

Governor HOGGATT. They can not get it now at all. Unless there is some relief it will be impossible for them to get coal, unless people can acquire title to the coal lands.

Mr. SMITH, of California. And there is not any other tonnage to justify the construction of the roads?

Governor HOGGATT. Absolutely none in those sections. In the Bering River field there is a projected road which is built up the Copper River now to secure copper from the Bonanza mine. It is the intention to extend that road to the coal fields if the coal fields are opened to location and they can mine coal. Otherwise, of course, there is no incentive for them to build.

Mr. PARSONS. They would have a branch running to the coal fields?

Governor HOGGATT. Yes—the road would branch at the crossing of the Copper River, one branch going to the Bering River coal field, and another up the Copper River to the copper fields in the Copper River and Chitina valleys.

Mr. SMITH, of California. How far is that from the forks?

Governor HOGGATT. It is about 75 miles from the forks to the coal fields.

Mr. SMITH, of California. Are the grades pretty heavy?

Governor HOGGATT. No; they have practically no grades from their ocean terminus at Cordova to the foothills containing the coal. Then they have a grade into the coal fields, depending on how far they go into the field. To the edge of the field there is practically no grade. Then I understand there are other roads projected, with a probability of their being built, from Kanak Island up the east side of the Bering River, which, if it is practicable to build them, would give an entry to the Bering River fields with about 26 miles of road.

I have felt that under the general law regarding railroads we were pretty safe, so far as the Alaska situation was concerned, because the tolls are absolutely under the control of the Secretary of the Interior; and if they do not comply with his regulations, I have no doubt it will be easy enough to get additional legislation providing for such penalties as are necessary to enforce this provision of law.

Mr. GAINES. Is that the law; or is the power given the Secretary to make a ruling?

Governor HOGGATT. No; it is in the law. It is in the law providing for railroad construction in Alaska.

Mr. GAINES. Where does the Government of the United States get its coal, the fuel to run its custom-houses and its arsenals and its various places up there?

Governor HOGGATT. Mostly from British Columbia. There is no coal mined on the coast now that is suitable for household purposes, except the coal which is mined on Vancouver Island.

Mr. GAINES. How much does it cost a ton?

Governor HOGGATT. That varies. For my place, for instance, buying in 200 and 300 ton lots, I paid \$8.25 a ton a year and a half ago for mine-run coal. The price has gone up now about \$2 a ton. It costs me \$10.50 a ton now, just 60 miles north of Juneau.

The CHAIRMAN. Is it not a fact that we are now coaling our ships with Comox and Nanaimo coal from British Columbia?

Governor HOGGATT. No; I think they are using Pocahontas and New River coal that is laid down in foreign bottoms along the coast.

The CHAIRMAN. Brought around the Horn?

Governor HOGGATT. Yes; brought around the Horn.

The CHAIRMAN. But otherwise, if they get any coal on the coast, it would have to come from Comox?

Governor HOGGATT. It would have to come from Comox or Vancouver Island, because, while they have steam coal in the State of Washington, and near tide water, it is such coal that it is of inferior grade to start with, and then it is coal that it would be dangerous to put in the bunkers of the ships on account of the liability of spontaneous combustion.

Mr. GAINES. Do you mean the Alaska coal?

Governor HOGGATT. No; the Puget Sound coal.

Mr. GAINES. What objection would there be to the Government of the United States working some of these coal mines up there for the use of our ships and our official families up there?

Governor HOGGATT. You can work them, but you have got to provide transportation, and that means an outlay of several million dollars to get transportation into either one of these fields, and it means probably two years of time besides. It will take at least two years to start them in before any of this coal can be put on the market—that is, for railroad construction and development of the mine.

Mr. GAINES. How far is the nearest mine from where one of our Federal courts sits?

Governor HOGGATT. It would be about 175 miles from the Bering River field to Valdez, where a court occasionally sits.

Mr. GAINES. There is no railroad, of course, between the two?

Governor HOGGATT. Oh, no; it would be water transportation.

Mr. GAINES. Water transportation?

Governor HOGGATT. Yes; that is, they have to go around by sea.

The CHAIRMAN. That is, there would be water transportation after you built 180 miles of railroad at very large expense?

Governor HOGGATT. Yes; 80 miles of railroad to Cordova, then by water.

The CHAIRMAN. Which you have not got?

Governor HOGGATT. Which they can not build until somebody gets title to these lands.

Mr. SMITH, of California. In either case there must be something like 180 miles of railroad built to get to either Matanuska or the other field?

Governor HOGGATT. No; about 80 miles of road from Cordova to the Bering River field, with a possibility of 26 miles of road from Kanak Island to the Bering River field. There is a dispute among the engineers as to the practicability of this route. I have not been able to make up my mind whether it is practicable or not. I refer to the Controller Bay route. Some of the engineers say it is not practicable. I have my doubts about it. That is 26 miles long. The doubt as to its practicability is because of the fact that Controller Bay is filled with ice during the winter, and it will take out almost any form of construction that can be put there. I have some serious doubts whether that statement is true or not. Other gentlemen, who I am told have some interests in land up in that section of the country, think that it can be built. If it can, they will get the coal to tide water in 26 miles. That is a question which it will take some time to decide.

The CHAIRMAN. Governor, if I may interrupt you a moment, this is the bill that the committee reported at the last Congress to meet your conditions, which was passed but did not become a law because it did not reach the President until the last day or two of the session?

Mr. RYAN. The last half hour of the session.

The CHAIRMAN. The last half hour of the session. It reached him, as you say, just about half an hour or an hour before the time Congress adjourned. [Reading:]

That any citizen or citizens of the United States may make entry under the coal-land laws applicable to Alaska for not more than one thousand two hundred and eighty acres of coal lands in that district which are covered by the valid locations of any persons who have assigned their interest therein to such citizen or citizens; but no person shall be entitled to locate more than one hundred and sixty acres of such lands, and no person shall be permitted to obtain patent to more than one thousand two hundred and eighty acres of such lands.

The Department now propose, not exactly that legislation, but section 8 d, which we have in their report. [Reading:]

That all persons, their lawful heirs or assigns, claiming under valid locations made prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their claims or locations by including in a single claim, location, or purchase, not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated; and for this purpose such persons, their lawful heirs or assigns, may form associations or corporations, or may transfer their said claims to other qualified persons, associations, or corporations, who may perfect entry of and acquire title to said lands in accordance with the other provisions of law under which said locations were originally made.

That is practically the legislation of last year, which failed to become a law simply because it did not reach the President in time.

Governor HOGGATT. No; I think there was another reason, Mr. Mondell, for the President's refusal to sign it. According to the report of Judge Ballinger, that bill would probably permit an accu-

mulation in the hands of one set of people of a series of these tracts. It was for that reason that the President did not sign it.

The CHAIRMAN. They did not have time to consider it, at any rate.

Governor HOGGATT. They were afraid of that feature—that it would permit the taking up of these lands in 1,280-acre sections and their continued accumulation in the hands of one person. That, I was told, was the reason the bill was not signed last year.

Mr. GRONNA. Governor, will there be any objection to putting a limitation in this bill, the same as in the Senate bill, that no one party shall have to exceed 2,560 acres? There is a limitation of that kind in the Heyburn bill, I understand.

Governor HOGGATT. No; I do not think there would be any objection. I can see none. I think that is a perfectly proper limitation.

Mr. GAINES. Governor, how many acres of coal land are there now in Alaska?

Governor HOGGATT. Roughly, so far as known, of good coal that can be put upon the market upon the Pacific coast, there is about 90 square miles of coal area. Of course that is a mountainous country. These coal lands lie in a mountainous country. All that acreage is not entirely underlain with coal. How much of it is underlain, only development will tell. It is not like the flat fields in Ohio or Illinois and Indiana, where you have an acre of level ground and you know that you have an acre of coal underneath it. But these coals are contained within this area, about 90 square miles, so far as the high-grade coals are concerned and are at present known to the Geological Survey. Just the exact acreage of course it is impossible for them or anybody else to tell until there has been a large amount of development work done. But, undoubtedly, all that acreage is not underlain with coal, as it might be, as I say, in the Illinois fields, for example.

Mr. GAINES. How many coal mines do you think would be operated if we gave each party the right to hold this maximum of 2,500 acres?

Governor HOGGATT. Oh, I think probably there would be a dozen that would start up right away, as soon as they could. I have heard of eight or ten aggregations of people who contemplate it, and have sufficient financial backing to go ahead with their projects. That is in the Bering River field. Of course it is impossible to do anything in this line in the Matanuska field until they get transportation. They are too far from transportation.

The CHAIRMAN. Has your attention been called to this Senate bill, 6805, introduced by Senator Heyburn.

Governor HOGGATT. I have read it over.

The CHAIRMAN: If the maximum were reduced to 2,500 acres, approximately, as provided in the general legislation, would that be satisfactory to Alaska, providing we were unable to secure general legislation on the subject?

Governor HOGGATT. I think so; I think so. They do not stand on the exact wording of any of these bills.

The CHAIRMAN. That bill has not been passed; and therefore we have not gotten it yet.

Governor HOGGATT. All we want is to be allowed to secure title to a reasonable acreage, about 4 sections, so that we can get title promptly and go ahead with mining operations. That is all that these folks are asking, as far as I have been able to determine.

The CHAIRMAN. This same condition applies in Alaska as it does everywhere else, and more, perhaps, in Alaska than at other points; that, as a matter of fact, unless you increase the coal area above what is permitted under the present law, the Government can never sell a lot of its coal land, because you can not get a cropping and make a discovery on every 160 acres.

Governor HOGGATT. No; it is absolutely impossible.

The CHAIRMAN. And therefore you have to give a larger area in order that the Government may even sell this coal land; because a man can not make a discovery on every 160 acres, and therefore he can not buy under the present law, although he would be willing to buy because he knew this coal to be under his land. So the Government, under the present law, is simply in the position of not selling its lands, except where a man can find a cropping.

Governor HOGGATT. Then, of course, we are in this position: In all other parts of the United States they have enough coal mines opened up to supply the market. We have not been able to mine a pound of coal in Alaska, and will not be unless some relief is given either by the Department or Congress. The Department will not give any relief, because the Secretary says it can not under the present law. Until relief is granted we can not mine any coal, and the development of that section of the country halts and is stopped. It affords the best prospect for a naval supply on the Pacific coast; in fact, the only prospect. In the whole Territory of Alaska these are the only ones that have been found of sufficiently high analysis to furnish coal that will be suitable for naval purposes. The Navy Department has not yet said that it is suitable, although they agree that the analysis would indicate coal of such quality as can be used for naval purposes; but they will not commit themselves until they have made a steam test and have seen the coal in actual operation in the furnaces. They never will make a report on coal as suitable for naval purposes until they have had a test in the furnaces under their boilers. I have no doubt, however, that it will be found of sufficiently high grade to be suitable for naval purposes.

Mr. GAINES. Where, if anywhere, Governor, are railroads being built up there?

Governor HOGGATT. Oh, we have little sections of railroads scattered all around through the Territory. We have one 20-mile section from Skagway to the boundary line. Then we have about 19 miles of this road from Cordova to the Copper River, which will go up the Copper River to the copper mines and over to the Bering River coal fields when they are opened.

Mr. GAINES. Were any railroads built, or are any railroads being built, under the law passed by the last Congress? It passed the House, but I do not know whether it passed the Senate or not.

Governor HOGGATT. No; they are all being built under the general railroad law which was passed by Congress in 1898.

Mr. GAINES. Did this railroad bill that passed the House pass the Senate?

Governor HOGGATT. No. All the roads being built are being built under the general law. I think the general law is very good. This matter was thrashed out in 1898, at the time of the rush for the Klondike; and people came down here asking for franchises for railroads starting from Pyramid Harbor, over what is commonly known

as the Dalton trail, going to Dawson. Congress refused to give them any such franchise, and then enacted this general railroad law under which the railroads are all being built, which provides against the exclusive occupation of the Pass by any railroad, and puts the control of the rates in the hands of the Secretary of the Interior.

Mr. GAINES. Has Secretary Garfield, or any other Secretary of the Interior, made any recommendation with reference to these coal lands?

Governor HOGGATT. No. I have been urging the Department and the President that some measure should be taken by which the people should be able to acquire in good faith workable areas of coal. The President included this recommendation in his message, and the Department has finally arrived at a way by which it can be done. The Department, I think, has always been anxious and willing that this should be done, but it was not until very recently that it had worked out in its own mind a scheme which it thought would inure to the benefit of the coal operators and protect the interests of the Government at the same time.

Mr. GAINES. What is that scheme?

Governor HOGGATT. As set out in this report of the Secretary of the Interior on Mr. Mondell's bill.

Mr. GAINES. What is the number of that bill?

Governor HOGGATT. The number of the bill is 19421.

Mr. GAINES. Is that the one we are now considering, Mr. Chairman?

The CHAIRMAN. Yes; that is the one we have been considering. There is one section suggested by the Department as an amendment to that bill which would cover and is intended to cover these particular cases in Alaska where claims have already been initiated, to allow them to consolidate those claims that have already been initiated in order that they may begin operations up there, and their railroads will be able to continue construction to the mine. As I understand it, it is practically impossible to get any money for the further building of those railroads toward the fields until people having the money to invest are satisfied that the fields will be opened and the tonnage given.

Governor HOGGATT. Yes; that is it. They can not afford to build a road (for instance, this Copper River road), if they continue under the present provisions. We are now getting a railroad into each coal field. Probably this year they will not construct bridges across the Copper River. It will be at least two years, or an indefinite period, unless some action is taken regarding the re-leasing of these coal lands, before they can get a pound of tonnage; because there is no other tonnage in sight along that road except that coal. It is the same way with other projects. There is the projected road from Controller Bay to the fields. You can not do anything, you can not secure the money until somebody gets title to some of these lands. It is the same way with the Alaska Central.

Mr. PARSONS. Governor, in your opinion, how large an acreage is necessary to induce the development of any coal proposition?

Governor HOGGATT. It ought not to be less than 2,560 acres, taking into consideration the condition of that country, and the uncertainty as to where the coal lies, and as to the faulting. It is an eruptive country. Folding and faulting is very common there, and there will be very considerable areas in the country underlain with coal which can

not be mined owing to the faulting and folding of the rocks. They must have large enough areas so they can get sufficient area of workable coal to justify the expense of opening.

Mr. GAINES. At that rate there will be sixteen sections combined?

Governor HOGGATT. No; four sections combined—sixteen quarter sections.

Mr. GAINES. Oh, yes.

Governor HOGGATT. Personally, I think the larger area would be better—that is, five sections instead of four—owing to these conditions. But people who are interested in the mines tell me that they are perfectly willing to accept the 2,560 acres, perhaps because they do not think they can get any more. Of course, I have not any interest in it at all.

Mr. PARSONS. How many tons a day must a concern mine in order to make it a profitable investment there, after they install their machinery, etc.?

Governor HOGGATT. That will depend, Mr. Parsons, upon the price they can get, the condition of the market on the coast, etc.

Mr. PARSONS. The demand will be mainly local, will it not?

Governor HOGGATT. No; the demand will go all along the coast.

Mr. ROBINSON. It would also depend upon the amount invested in machinery and equipment, would it not?

Governor HOGGATT. It would depend upon their plant, of course, their cost of mining, and then upon the price they could get. They will find that they will be in pretty fierce competition with some of the coals on the coast. I have an idea that when Mr. Dunsmuir, who owns all the coal on Vancouver Island, finds his market along the coast being taken away from him by Alaskan coal, he will cut the price of his coal. For some fourteen years, until a year ago, when he raised the price 50 cents a ton, he got at the bunkers \$3.50 a ton for mine-run coal. The bunkers were 6 or 7 miles from the mines. That has made Dunsmuir the richest man on the Pacific coast. There is a profit there of from \$2 to \$2.50 a ton. I think he can get that coal down there for \$1 a ton at the very highest. But it is going to be much more expensive to get Alaskan coal.

The CHAIRMAN. Dunsmuir has the advantage of being able to employ oriental labor, which an American can not do.

Governor HOGGATT. Only on the docks. He does not employ them at the mines.

The CHAIRMAN. When I was at Nanaimo—that is nine years ago—up in the Vancouver country, almost all of the miners were Chinamen, too. They may have since put in white men.

Governor HOGGATT. When I used to go there, from 1894 to 1898, the only oriental laborers were at the docks—Chinamen. Since 1898 I have not been there, and I do not know the conditions; but my understanding has always been that the miners were white men.

The CHAIRMAN. No; they did employ a good many orientals.

Governor HOGGATT. He may have employed a few Japanese there for a time, but not very long.

Mr. GAINES. Governor, how much does the Government pay out per year for the purchase of coal to run the Government machinery up there?

Governor HOGGATT. Oh, it is not a very large sum.

Mr. PARSONS. Governor, how far did you say the Dunsmuir mines were from tide water?

Governor HOGGATT. About 7 miles.

Mr. PARSONS. Not more than that?

Governor HOGGATT. No. Now, of course, in Alaska the labor is high priced. The minimum scale there is \$3 for common labor.

Mr. GAINES. Governor, there is just one more question I want to ask you there. I know very little about this matter, and I want to know the facts. Section 9 of the bill introduced by the chairman reads in part thus:

That any persons, associations, or corporations which have obtained, prior to the passage of this act, claim or title to any coal lands of the United States by alleged unlawful means, shall, upon proof to the satisfaction of the Secretary of the Interior that the full coal-land price of such lands as classified by said Secretary under authority of law has been paid to the United States, (may) have their patents confirmed for not to exceed two thousand five hundred and sixty acres of such coal lands, if patents have issued; or, if patents have not issued, shall receive patents for not to exceed said area.

The CHAIRMAN. May I correct the gentleman from Tennessee before he goes further? That is not section 9 of the bill as introduced by the chairman. That is section 9 as proposed by the Department of the Interior.

Mr. GAINES. All right. By what unlawful means had parties acquired coal lands up there?

Governor HOGGATT. I think the only means I have ever heard of was this projected combination for securing title to 160-acre tracts.

Mr. GAINES. A projected combination contrary to the public-land laws?

Governor HOGGATT. Contrary to the spirit, as the Department holds, of the public-land laws. They did not hold that until two years ago.

Mr. GAINES. It is not contrary to our antitrust laws, is it?

Governor HOGGATT. No; it simply means that a crowd of us get together and locate enough of this land that we can make it profitable to mine after getting title.

Mr. GAINES. Of course, Governor, I do not suppose you would want (in fact, I am satisfied you would not), and the Department and the committee would not want, as I am sure I would not, to have us go up there and turn loose a coal monopoly on the people of Alaska.

Governor HOGGATT. I am satisfied that this bill will not permit it; and the section in Mr. Mondell's bill (section 5, I think it is) goes as far, I think, as you can go in reasonable restraint of these combinations. With that in the law I do not think we need have any fear on that score; and with the railroad law as it stands in Alaska to-day we can hold the transportation companies down to fair and reasonable charges in handling coal.

Mr. SMITH, of California. What do you say about this, Governor? The conceded evil in the United States in coal matters is the acquisition by private parties of large bodies of coal and leaving them alone, holding them for higher prices, or something of that kind. There is no provision anywhere in this law against repeating that thing in Alaska, is there?

Governor HOGGATT. No; except that the natural conditions, I think, are such that it will be a generation or so before it will be

practicable for these people under any circumstances to make any kind of a combination.

Mr. SMITH, of California. But you think there would be no inclination on the part of men interested in coal elsewhere to acquire the coal there and not work it?

Governor HOGGATT. I do not think they could; there are too many people interested in it. This Bering River field, taken up in 160-acre tracts, has been pretty well located all over. In order to have one corporation get hold of all the land, you have to reckon with every man who owns coal land there, who has a claim of any kind to 160 acres.

Mr. SMITH, of California. If they acquired here and there a claim, they might break up the country so that it would not be profitable for anyone else to work it. At any rate, large areas of coal have been acquired in the United States under the 160-acre law and locked up, so it has been represented to us.

Governor HOGGATT. I do not think they did that under any 160-acre law. Most of it by land grants to railroads.

Mr. SMITH, of California. I understand that coal land is being held that way in Colorado and some other places.

Governor HOGGATT. They did not acquire it under any 160-acre title. I think you will find that they got those large areas when the land could be bought in much larger bodies than 160 acres.

Mr. SMITH, of California. In Utah they acquired some of it through the State selection law; and we had testimony given before us last year to the effect that a large area of coal land was held by people, not with any view of working it at all, but merely for the future.

Governor HOGGATT. If they hold that land up there they are not going to make any money out of it. They will have to take their money out of it quickly, because they have to survey all of that land; and if they pay \$10 an acre for the land, it will cost them not less than \$25 an acre before they get to patent. They will have to work it in order to justify them in buying it and surveying it at that expense. There is not going to be a whole lot of profit in it for them. They can not reconcile these differences; there are too many people that have gotten in there and taken up these locations who intend to engage in mining operations for them in a generation to effect a combine. Then there is this further condition: The rate bill protects us, so far as ownership by railroad corporations is concerned, and this provision relating to forfeiture, in case there is a combination in restraint of trade, will keep these gentlemen from any combination.

Mr. GAINES. Governor, do these people propose to buy outright these coal lands or to lease them?

Governor HOGGATT. To buy them outright.

Mr. GAINES. I see that the Secretary says something here about leasing them.

Governor HOGGATT. He made that recommendation as an alternative—that he would like to have something of that kind put in. You will notice that that section states that a man who locates a coal claim may elect whether to lease or take the title in fee.

Mr. GRONNA. Right there, Governor, let me ask you a question. Do you think that under a leasing system you could interest capital in Alaska?

Governor HOGGATT. No. I do not think any man under the sun would undertake, in a new field, to take a lease from the Government and start a mining operation; certainly no man who had ever had any experience in mining would. He has enough difficulties in a new country, anyhow.

Mr. GAINES. Suppose we provide for a ninety-nine year lease, and all rights to be forfeited unless you work the mine?

Governor HOGGATT. I do not think you could get anybody to go there in that way. In the first place, none of us like to be tenants of anybody. It is contrary to the spirit of most of us to be tenants. We want to be the owners of whatever little we have.

Mr. MERILLAT. Governor, does not the Government now have reserved from entry twenty times as much coal land as will be affected by this bill?

Governor HOGGATT. Oh, it has reserved everything except these locations already made in Alaska.

(The committee thereupon adjourned until to-morrow, Thursday, April 30, 1908, at 10 o'clock a. m.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE PUBLIC LANDS,
Washington, D. C., May 1, 1908—10 o'clock a. m.

The committee met at 10 o'clock a. m., Hon. Frank W. Mondell in the chair.

The CHAIRMAN. Gentlemen, we have present, as we have had for several meetings, several gentlemen from Alaska interested in coal-land legislation who I think have borne themselves with an amount of patience, under trying circumstances, which entitles them to the favorable consideration of this committee. You will remember that we thought we settled this Alaskan business, so far as entries already made were concerned, in the last Congress, and we would have settled it, if the bill which passed both Houses had been signed. The bill reaching the President half an hour before Congress adjourned, there was not sufficient time for its consideration and it was not signed. That bill was substantially the same in form and intent as the present bill which the Department has now approved.

Mr. REYNOLDS. Applicable to Alaska only?

The CHAIRMAN. Not applicable to Alaska generally, but applicable to locations heretofore made in Alaska. It does not provide for any further locations.

It occurred to me that in view of the lateness of the session, and the fact that it may take us some days to agree upon a general bill, and in view of the fact that these people have been waiting here all winter for something to be done, that if anything is going to be done to relieve the situation in Alaska, it ought to be done now. The Secretary of the Interior sent word to me several days ago that he would be glad to spare the time to appear before the committee to testify to the urgency of these matters, and was coming to-day, but was called to the White House. Yesterday morning he was coming, but was called to the Indian Committee. This morning he said he would come here before the Cabinet meeting if he was sure the committee

would be here sharply at 10 o'clock. I told him the committee was generally here promptly at 10 o'clock, but of course I could not give him any assurances on that, so he did not come. We are not prepared, and probably will not be for some time, to pass upon all the questions in my general coal-land bill, and inasmuch as we have the proposition with regard to Alaska before us, with the indorsement of both branches of the last Congress, and now with the indorsement of the Interior Department, perhaps it would be wise to pass upon this Alaska matter separately, and, if we agree, launch this upon the legislative sea so there will be a possibility of these gentlemen securing relief this session. Governor Hoggatt, when were the locations referred to in this bill made?

Governor HOGGATT. Some of them were made as early as 1903.

The CHAIRMAN. In 1903. And the people have been hanging on "by their gills," as the saying is, in this rough, rugged mountain country. A good many of the men that made the original filings were not able to promptly do all that was necessary to perfect an entry and make the payments. The expense of survey is very heavy, the country is isolated and difficult of access. Then along came the Department with a withdrawal of coal lands, and nothing could be done. Now these lands are restored but these pioneer enterprises in Alaska can not be carried on except with considerable areas of land in a body. So the last Congress passed a bill allowing locators to consolidate their entries, and now the Department sends us down as a part of the report on the general bill one section which I have taken out and put into this bill applying to this condition, and I have added to it what was sections 5 and 6 of the general coal-land bill.

Mr. FERRIS. What is the number of this bill?

The CHAIRMAN. This is Alaskan bill No. 21412.

Section 5 of the general bill is as follows: "That title to the lands and deposits purchased under the provisions of this act shall be forfeited to the United States, by proceedings instituted in the courts for that purpose, if the owner of such title shall tacitly or otherwise enter into any contract, combination in the form of a trust, or conspiracy in restraint of trade in the mining or selling of coal;" and then section 6 of the general bill giving the United States a preference in the purchase of coal for the Army and Navy at any time.

Mr. SMITH, of California. What is the meaning of this language in line 6: "They may consolidate their said claims or location by including in single claims or location"—you do not mean that they are going to relocate it or reclaim it?

The CHAIRMAN. Now, Mr. Smith, I should have written that a little differently if I had been writing it, but the Department wrote it that way. I suppose with the idea that if the locators wanted to make entry in the form of new claim or location it could be done in that way. I suppose the Department's idea was to give them wide latitude as to how they should consolidate.

Mr. SMITH, of California. I thought all that was necessary was to provide the law by which they could proceed to pay for it and get a patent.

The CHAIRMAN. I understand, but under the law they can not proceed. Undoubtedly, some of these poor prospectors have not around

their jeans \$1,600, and if the Department held that they must show that they have that \$1,600 in bank and have not borrowed it from anybody they could not make the entry. The idea was to allow them to consolidate in advance of patent if they want to, so that one man can come up and make payment for half a dozen of them and so that there need not be an expensive separate survey for each 160 acres.

Mr. SMITH, of California. If they wanted to.

The CHAIRMAN. Yes. This feature, I understand, is satisfactory to you gentlemen?

Mr. RYAN. Yes, sir.

Mr. SMITH, of California. That is in the nature of a relocation?

The CHAIRMAN. I would say that under this bill they could do either. They could make their payments each for himself, or they could, by joint action as an association, make a relocation as an association, so that six or eight of those fellows could come forward and make the relocation as an association under this bill.

Mr. SMITH, of California. Or rather letting go what they now have and taking a new location, is that your understanding?

Mr. RYAN. It is a consolidation and making the one entry.

Mr. SMITH, of California. You simply would go to the office, this sixteen or twenty of you, whatever it was, and say, "We want to purchase as one."

Mr. RYAN. Yes.

Mr. SMITH, of California. And to have the patent issued to some corporation we have formed?

Mr. RYAN. Yes.

The CHAIRMAN. The Department contemplates three distinct things here. They may consolidate the single claims, and any one man could take the location for all within the limitation prescribed or they could make a new relocation covering a certain area, or six or eight entry-men could walk into the land office together and make their payment together.

Mr. SMITH, of California. And they may convey it to a corporation and the corporation proceeds to apply for title.

The CHAIRMAN. Yes.

Mr. REYNOLDS. Is this to obviate the objection made to the Department to some of the locations of those lands up there?

The CHAIRMAN. The Department made no objection to the location of those lands, but a good many of these men who made these locations were men without much money, and the Department sometimes raises the question, "Where did you get your money?"

Mr. SMITH, of California. And where are you going to get it?

The CHAIRMAN. Yes; and there was also the difficulty in surveying each claim, where it is expensive to survey, where it cost \$25 a day for a surveyor and his fare up there and back. There were all those difficulties which they were trying to surmount, and finally the Department came in and made a blanket withdrawal; not with any intent particularly of putting these people out of business, but it had that effect. So in order to give them the opportunity to make their locations and their surveys in a way that it is possible for them to make it under those conditions we allowed them to consolidate in the bill of last year, and now the Department proposes that consolidation and changes the language slightly in the form we now have it.

Mr. REYNOLDS. I had the impression the Department had held up some of these claims upon the theory that locations had been made in the interest of other persons than those making them.

The CHAIRMAN. The Department has not actually held up any of these claims, except that by a blanket order it declined to let anybody make proof on coal entries. Here is what the ex-Commissioner says:

At the time these fields were located corporations were organized, and the men had really no method of taking advantage of these coal lands, and it resulted in their getting involved in conditions which, upon the records of the Land Office, are a technical violation of the statutes, it not being the intention of the people to operate them, but to enter in a consolidation of the lands; and they could not, by virtue of the circumstances, accommodate themselves to the laws. In this bill we provide that they can transmit their present entries in the form such as these new entries will be treated, as primary entries.

That is, they may be treated as primary entries under this bill or the Department could treat them as the old location entered in a body. They could do either, under the provisions of this act, but the idea of last year and the idea of the present bill is to allow these men to get together and get title to these coal lands and get them opened up.

Mr. SMITH, of California. And get enough of it in one holding to justify the expense of opening it up.

Mr. HOWLAND. Mr. Chairman, in line 4, on the first page, it says "that all persons, their lawful heirs or assigns, claiming under valid coal locations in the district of Alaska." Valid coal locations. Does the Department hold that these old locations that have been made by the people we are attempting to help here are valid coal locations?

The CHAIRMAN. I do not think they have raised the question.

Mr. HOWLAND. Or are we going to legislate here for a body of people and the Department can turn around and say that none of these people have valid locations?

Mr. SMITH, of California. They do not hold that the locations were invalid. They held that they contemplated doing a thing not allowed by law, to wit, made an agreement to convey the property when they got it, but the location is conceded to be valid and regular.

The CHAIRMAN. If you do not use the word "valid," the question was whether a man might not come forward who had never made a location of record and say, "I have a coal location." It would seem that you would have to use some term there to indicate that it was an actual location, in accordance with the law. (Addressing Governor Hoggatt.) Is it the understanding of you gentlemen that you can perfect under the language of this act?

Governor HOGGATT. I think you should leave that word "valid" out. There have been no locations made since the withdrawal of these lands a little over a year ago. Now, they might come back and say, "You made this location and a number of you had the idea of combining when you made these locations, and that is contrary to law, and it is not valid to start with."

Mr. SMITH, of California. Do you think they would go back of the locations?

Governor HOGGATT. I would not be surprised.

The CHAIRMAN. The Department people tell me that they are anxious—they phone me and they write me they want to appear before the committee—they are anxious to give you a chance to do this.

Governor HOGGATT. They are; but I think that if you can leave the word "valid" out, it would be better. Now, if we can avoid this technicality, I think it would be better. There have been no locations made since the withdrawal of these lands, and if the bill would simply say that all locations made prior to the passage of this act could be combined, then they could not come back at us.

Mr. SMITH, of California. What is the definition of locations?

Governor HOGGATT. The location would be such locations as the law already provided for—has heretofore provided for. Now, they may hold—the thing that has been sticking with them all the time—here are these gentlemen, Mr. Ryan, Mr. McKenzie, and myself and some more—as a matter of fact, I am not in the field at all. I had an opportunity, but I told them I had all the troubles I wanted. Suppose we locate each 160 acres, and then we attempt to prove up on it. Now, the Department says, "You folks when you made these locations had in mind that when you each got your patent to the land you would combine your quarter section and begin operations. Now, that is contrary to the spirit of the law." In other words, that the location, to start with, was invalid because we had that in mind.

Mr. SMITH of California. Because you had an evil thought in your head.

Governor HOGGATT. Yes; they may take that view, and I think you had better leave it out, and it will simply cover the locations already made.

Mr. GRONNA. It seems to me that for your own protection it would be better to have the word "valid" in there.

Governor HOGGATT. They will come back and say that any of these gentlemen that have located in groups have had this combination in mind, and therefore it was a location, but not a valid location, and they are just as likely to do that as anything else.

The CHAIRMAN. I want to make this suggestion for the consideration of the committee, in view of what the Governor has said, that if you struck out the words "valid coal," in line four, and after the word "locations" wrote "under the coal laws," so it would read "all persons, their lawful heirs or assigns, claiming under locations under the coal laws in the district of Alaska," it might remove the objection raised by the Governor. My notion is that a reasonable interpretation of that word "valid" would be that had a location been made under the coal laws, as prescribed by the statute, that would be considered a valid location.

Mr. HAMILTON. I think we ought to put something in there which would show that it should not be held invalid because of this intention that he may have had in his mind when he located.

The CHAIRMAN. If we struck out the words "valid coal," as I suggested, and put in the words "under the coal laws"—

Mr. REYNOLDS. If you struck out the word "valid," you might just as well pass an act validating all the locations, without anything further. Would not that have the same effect?

The CHAIRMAN. There is no question about these locations further than that the locators may have had it in their minds when they located to consolidate their claims for the purpose of working them, and as that is necessary there can be no reasonable objection to it.

Mr. SMITH, of California. When we passed this law permitting them to do the things they may have had in their minds, I should think they ought to consider it a valid location.

Mr. GRONNA. Are there any contests of these claims, Governor?

Governor HOGGATT. I do not think so. It is simply that these claims have been taken up in groups, and while the Department has not been able to satisfy itself that there has been any dummy location, yet they have said that they can not relieve for one entering in good faith and in a proper and legitimate way without letting down the bars.

Mr. GRONNA. Should there be any contest, I believe the word is very important in the bill.

The CHAIRMAN. I have never heard of any contests.

Mr. SMITH, of California. Suppose we say any location made according to the coal-land law.

Mr. HOWLAND. I think it is open to the construction that I suggested—the Department might be technical about it.

The CHAIRMAN. I think that is possible. My hope is that the Department would interpret that as being a location made in regular form under the coal laws.

Mr. GRONNA. Would it not be better, Mr. Chairman, to leave the language of the bill as it is and then put in a proviso saying what shall constitute a valid location?

Mr. SMITH, of California. The law already says that.

The CHAIRMAN. A valid location is a location made in accordance with law. I do not think any Department can go back of that proposition.

Mr. SMITH, of California. It is the most absurd thing in the world. They might just as well say that a man who had some thought of committing burglary that therefore his coal locations were invalid. He has not committed the act, but at the time he located he had the notion that he would burglarize a cabinet, and therefore his coal locations are invalid.

Mr. HALL. It has been suggested that there might be some contests. How would it do to cover that proposition by the insertion of language to the effect that these locations might be consolidated where there were no intervening or adverse claims?

The CHAIRMAN. If the gentleman will notice lines 13 and 14 of the bill, I think he will see that that is entirely covered:

In accordance with the other provisions of law under which said locations were originally made.

Now, one of the provisions of that law is a provision with regard to the settlement of contests, and of course that would have to be invoked. So I am inclined to think, Mr. Hall, that that would cover that proposition. There is a rather elaborate provision in regard to adverse contest in that law.

Mr. HAMILTON. Would not this avoid that instead of using the word "valid"—that no location shall be held invalid by reason of the entryman having had in mind such consolidation as herein contemplated at the time of making the entry.

Mr. FERRIS. Mr. Chairman, by this very act we propose here we permit them to do now the very thing they could not do then, and how in the world are you going to tell what they had in their minds

and what they did not have in their minds. I think they ought to be permitted, where there is no adverse right, to go on and consolidate under this act. I do not think we ought to legislate anybody out of existence, but where such rights do not occur these people who are up there struggling along and trying to get that business opened up they ought to have the same benefits that people going there now have.

The CHAIRMAN. Now, I want to make this suggestion. If you struck out the word "valid," as a matter of fact, these locations still remain subject to all the provisions of law under which they were made. The only objection to striking out the word valid, it having been in the bill, striking it out would call some one's attention to it. What we have proposed to do is to give these men the right to consolidate, where otherwise they must comply with all the provisions of the law by making separate entries of each 160-acre claims, and therefore possibly there is no necessity for the word "valid" in the bill at all.

Mr. McGUIRE. I think it had better remain, because it might create a suspicion and because I do not think it does any harm or any good either.

Mr. SMITH, of California. It would hurt the bill a good deal if you ran a line through it and took it on the floor of the House in that shape.

Mr. ROBINSON. Any difficulty of that sort could be gotten around by introducing a new bill.

Mr. HAMILTON. Doesn't it state clearly that this intention of their part is validated?

Mr. SMITH, of California. That thing which was an evil thought, as they thought, is now made virtuous.

Mr. REYNOLDS. They could not raise that as an objection now.

Mr. SMITH, of California. I do not see how they could.

The CHAIRMAN. I am inclined to think that the reasonable construction—and I am in hopes that the Department will give it a reasonable construction—of the section as it stands will not work any hardship.

Mr. GRONNA. I should be in favor of leaving it just as it is.

Mr. SMITH, of California. I move that the bill be reported as it stands, if there is no suggestion as to any other section. If you leave it out, the Department will hold that if the entry was not valid you have got no standing.

Governor HOGGATT. The Department construes every possible technicality against the locator.

Mr. SMITH, of California. Are they inclined to do that in this case.

Governor HOGGATT. They are not inclined to do that in this case, but as a matter of fact they do construe every possible thing against the entryman and in favor of the Government.

Mr. HALL. I think it would be very unbecoming on the part of the Department to hold that it was invalid because of an intention to consolidate, when by this act we show a legislative intention very clearly that such an act is valid.

The CHAIRMAN. And should not be considered as invalidating the entry. I think there can not be any question about that. The motion of the gentleman from California is to report the bill.

Mr. GRONNA. I think it would be better to adopt a bill section by section.

Mr. SMITH, of California. If they think that word is going to be used as a means of defeating the bill, we had better recast the bill.

Mr. GRONNA. Governor, may I ask you this question? You want a bill to protect these locators, the honest locators of coal lands in Alaska?

Governor HOGGATT. Yes; that is all

Mr. GRONNA. You do not want to protect a dummy locator?

Governor HOGGATT. Under no circumstances.

Mr. GRONNA. The way this bill reads now I can not see that it would in any way prevent them from holding this land, because it does not make any difference to us or to the Department what the locator may have been thinking about; if they have complied with the law, it is a valid location.

Mr. HALL. We declare by this bill that that act of combination is valid.

Mr. GRONNA. That is what I maintain, that this bill itself validates it.

Mr. SMITH, of California. I move that we adopt the first section. (Which, being duly seconded, was put and carried.)

The CHAIRMAN. Are there amendments suggested to section 2?

Mr. VOLSTEAD. I do not know that I have any amendment to suggest, but I want to suggest that it is absolutely ineffective.

Mr. SMITH, of California. You mean that it can be evaded by a lessee?

Mr. VOLSTEAD. Or by a corporation.

The CHAIRMAN. Somebody has got to own this land.

Mr. SMITH, of California. But the owner may not enter into the combination. That was the discussion we were having here yesterday. I may lease it to you on a royalty, and you may enter into an unlawful contract for the coal. I think that is covered by the Sherman Act.

Mr. VOLSTEAD. The Sherman Act does not reach it at all. The States legalize all confounded combinations under the sun.

Mr. SMITH, of California. But the Sherman Act affects all interstate commerce and Territorial commerce.

Mr. VOLSTEAD. While it theoretically does so, it does not in fact. The Sherman antitrust law has been absolutely set aside by the States.

Mr. SMITH, of California. Not in Alaska, because that is United States territory.

Mr. VOLSTEAD. But then they permit the entry of any corporation in there to do business, and if, for instance, a New Jersey corporation goes up there, it can buy up every other corporation under the sun.

Mr. ROBINSON. Mr. Chairman, I move this amendment: Insert these words after the word "title," in line 8: "his lessee or trustee or any person holding under him."

Mr. SMITH, of California. Do you want to say person or corporation?

Mr. ROBINSON. Person or corporation.

Mr. SMITH, of California. Now, do you mean that the title to the land shall be forfeited to the United States if the owner, tenant, or lessee enters into any unlawful contract?

Mr. ROBINSON. That is certainly what that language means.

Mr. SMITH, of California. That would visit the penalty upon the person who is innocent. Now, let us see if you can do that. Suppose you own the land and you lease it to me—

Mr. ROBINSON. If you want to prevent a combination that is the way to do it.

Mr. SMITH, of California. Let us see if the courts would impose a penalty of that sort. You lease it to me with all the restrictions that words can express against the formation of any pool or trust by myself. You bind me in every possible way you can, and yet I do it. Now, then, would the court say it was fair to take your property away from you because I, in violation of the contract—

Mr. ROBINSON. If it was not fair to do it, the court would not do it.

Mr. SMITH, of California. Would the court do it?

Mr. ROBINSON. No.

Mr. SMITH, of California. Then it should not be put in here.

Mr. HALL. Would not that be analogous to the case in the prohibition States, where the fines and penalties for violation of the liquor law are made a lien on the premises where the liquor is sold? Now, that is done independently of complicity in the sale of the liquor, and yet the court sustained laws of that character.

Mr. SMITH, of California. Where the owner is entirely innocent of any participation?

Mr. HALL. Oh, yes. They charge him with notice. He is charged with notice of the character of the occupancy of his building.

Mr. ROBINSON. There is an antigambling law in my State to that effect, making the building liable to the fines and penalties imposed, and that law has been sustained.

The CHAIRMAN. Charging the owner with responsibility as to violation of law committed by himself, or agent, or lessee?

Mr. ROBINSON. No; but charging the property of the owner with liability for penalties imposed for illegal operations occurring on those premises. In other words, it makes the owner, in some sense, the guarantor that his property will not be used to violate the law. It charges him with responsibility and with knowledge of what occurs on his premises.

Mr. GRONNA. You are absolutely right, Mr. Hall, in your statement.

Mr. ROBINSON. I simply raised the question to get it before the committee.

Mr. SMITH, of California. I am as anxious as you are to have the matter properly protected in that respect, but it is of very grave doubt in my mind whether you could enforce a forfeiture of your property to the Government, because I, your lessee, enter an unlawful compact.

Mr. GRONNA. I can not quote you the Supreme Court decision, but the supreme court of the State of North Dakota has held that property—that is, for instance, I rent you my building for a pool room or a soft-drink room, and liquor is being sold—the supreme court of North Dakota has held that the building can be sold to pay the fine.

Mr. SMITH, of California. That is going a long way.

Mr. ROBINSON. I want to say just this one word in regard to that amendment. If you want to prevent combinations in restraint of the sale of coal you would have to have some such provision as this.

Otherwise, an owner by leasing to anybody will evade the very object of this provision. He not only can do it, but it will be done almost in every instance.

Mr. GRONNA. It is specified in the lease in our State in regard to selling intoxicating liquors. In fact, they make them put up bonds.

Mr. SMITH, of California. That is a police regulation which would be different from a matter of forfeiture of property right.

Mr. HALL. The owner takes some chance when he leases his property.

Mr. SMITH, of California. I doubt if you ought to hold the owner for what takes place after the coal has become separated and become personal property and is going out to the market. As long as it is part of the realty you might, maybe with propriety, hold the owner responsible, but when it has been separated and become personal property and gone out into the channels of trade, I doubt whether you ought to visit the penalty of violating the law on an entirely innocent man. Aren't you going further with this than the liquor law? A man has a business of real estate and he leases it to another party, and if he leases knowing that there is going to be an illegitimate business conducted there he ought to assume responsibility, because he is a party to the transaction. The owner of a coal mine would lease it to a party not for the purpose of doing an illegitimate business, but for the purpose of doing a legitimate business. Suppose the lease were about to expire and the lessee wanted it continued, or for any other reason a difference might arise between the owner and lessee, there is an opportunity for the party holding the lease to absolutely destroy and forfeit the property to the Government of the United States, which is property owned by another party and which was leased for a perfectly legitimate business, and without the power of the lessor to prevent it.

Mr. FERRIS. Couldn't he forbid that in his lease and require a bond to be given him?

Mr. REYNOLDS. Couldn't you provide that the lease itself should become void?

Mr. SMITH, of California. You might visit it on the lessee.

Mr. HOWLAND. I question in my own mind whether the court would not construe it to mean only a forfeiture of the lease. The court would hesitate to visit it on the owner.

Mr. HALL. Do the owners never protect themselves against their tenants by a bond?

Mr. McGUIRE. I can see where there could be something of that kind. This statute would be very easily evaded simply by a person transferring or leasing his property, and then the lessee making a contract of this kind in violation of law, unless by an entirely different proceeding you can make the party entering into the combination responsible.

Mr. HALL. That would be a penalty in personam and not in rem, and could not affect the property. This is designed to affect the property.

Mr. McGUIRE. It is only a question of how far you want to go.

Mr. HALL. I think the owners would be very careful to protect themselves.

Mr. McGUIRE. You can see where damage in the absence of such precaution.

Mr. HALL. But the chances will be taken by the owner who leases the property instead of by the Government in that case.

Mr. VOLSTEAD. Let me suggest this language: "If the owner or anyone having use or control of said land or deposit." The use or control will be broader than attempting to enumerate.

Mr. SMITH, of California. Don't we all agree that the Sherman law applies to Alaska?

Mr. VOLSTEAD. It does not apply for this reason, the Sherman anti-trust law can only reach interstate commerce.

Mr. SMITH, of California. And commerce within the jurisdiction of the United States, within the Territory.

Mr. VOLSTEAD. I do not believe it applies, except as to—

Mr. SMITH, of California. But all these later laws, like the Hepburn Act, apply to business within the Territory, or interstate business.

Mr. VOLSTEAD. Whenever they get a Territorial form of Government, of course, their local jurisdiction would probably dispose of all this.

Mr. SMITH, of California. That would not oust the United States of jurisdiction until it became a sovereign State.

Mr. VOLSTEAD. At the same time they would permit the legislature to practically use all the police power of a State.

Mr. SMITH, of California. You can not form a combination in restraint of trade in Arizona.

Mr. FRENCH. Mr. Chairman, let me suggest a little amendment from the one suggested by Mr. Robinson. Let the language read from line 8 on just as it does now, and then beginning with the end of line 11 say, "and if the lessee or trustee or other person or corporation of the owner, holding under the owner of such title, shall tacitly or otherwise enter into any contract, combination in the form of a trust, or conspiracy in restraint of trade in the mining or selling of coal, such contract or combination or conspiracy shall be null and void and shall immediately terminate the lease." That does not throw a penalty upon the owner for the default, you might say, of the lessee, but it terminates the lease.

Mr. HAMILTON. Suppose the owner did not care whether it was terminated or not?

Mr. FRENCH. It makes it null and void.

The CHAIRMAN. Is the committee ready to pass upon the amendment offered by the gentleman from Arkansas?

(Which having been duly seconded was put and carried.)

Mr. HAMILTON. I move that we report this section, as amended, favorably.

(Which motion being duly seconded was put and carried.)

The CHAIRMAN. Is there any amendment suggested to section 3?

Mr. ROBINSON. I move its adoption, Mr. Chairman.

(Which being seconded was put and carried.)

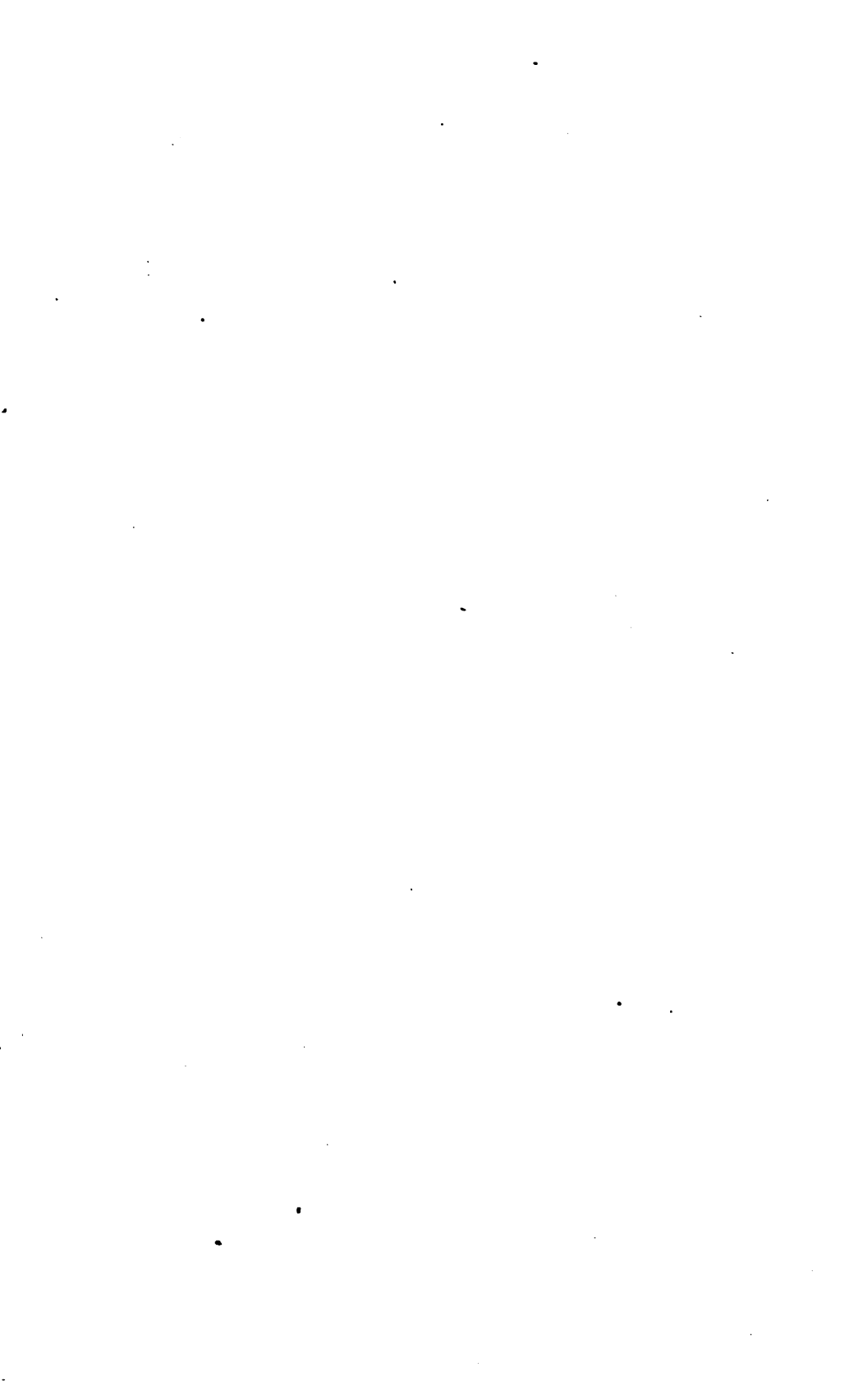
Mr. McGUIRE. I move that the bill be favorably reported as amended.

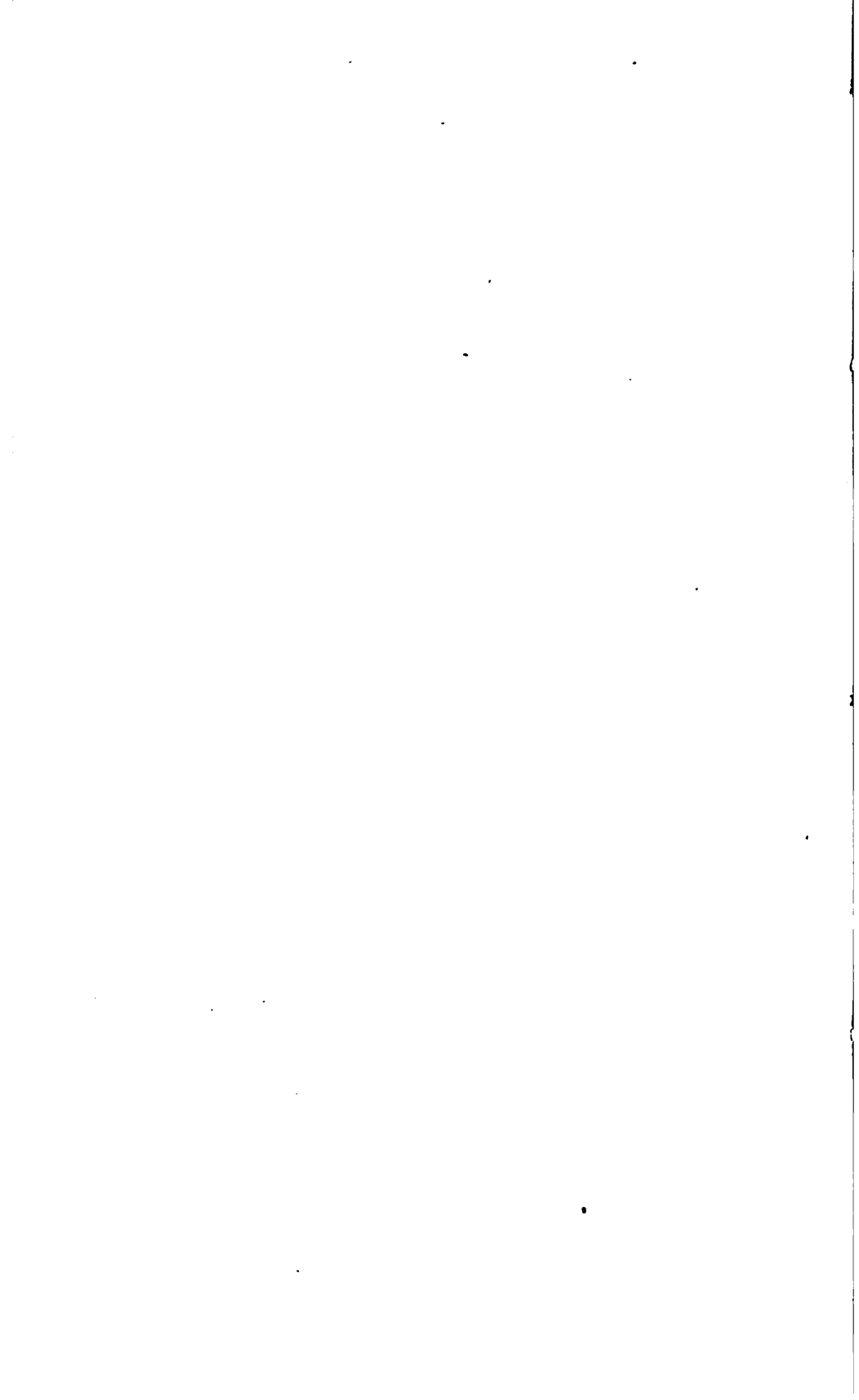
(Which being duly seconded was put and carried.)

(The committee thereupon adjourned.)

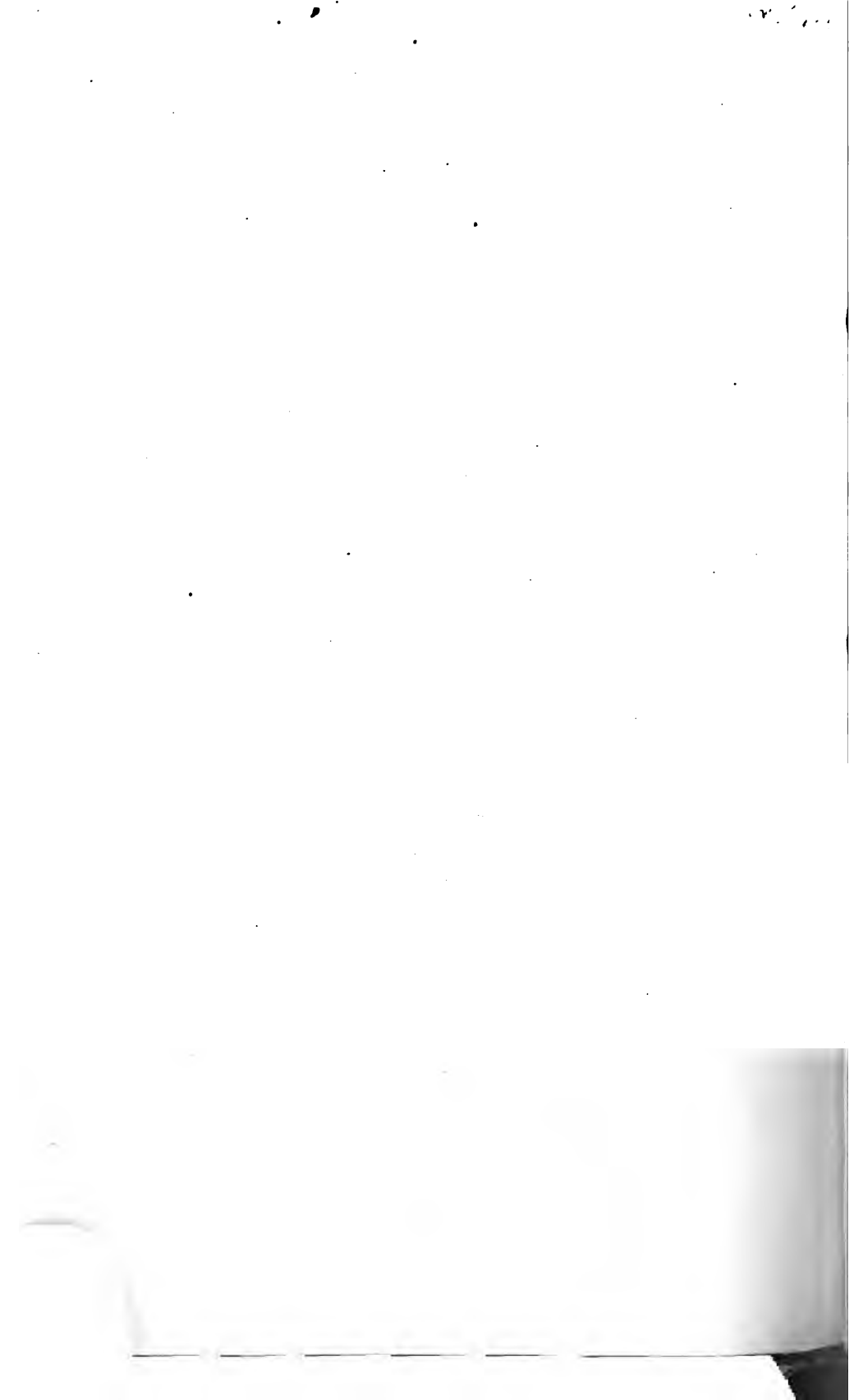


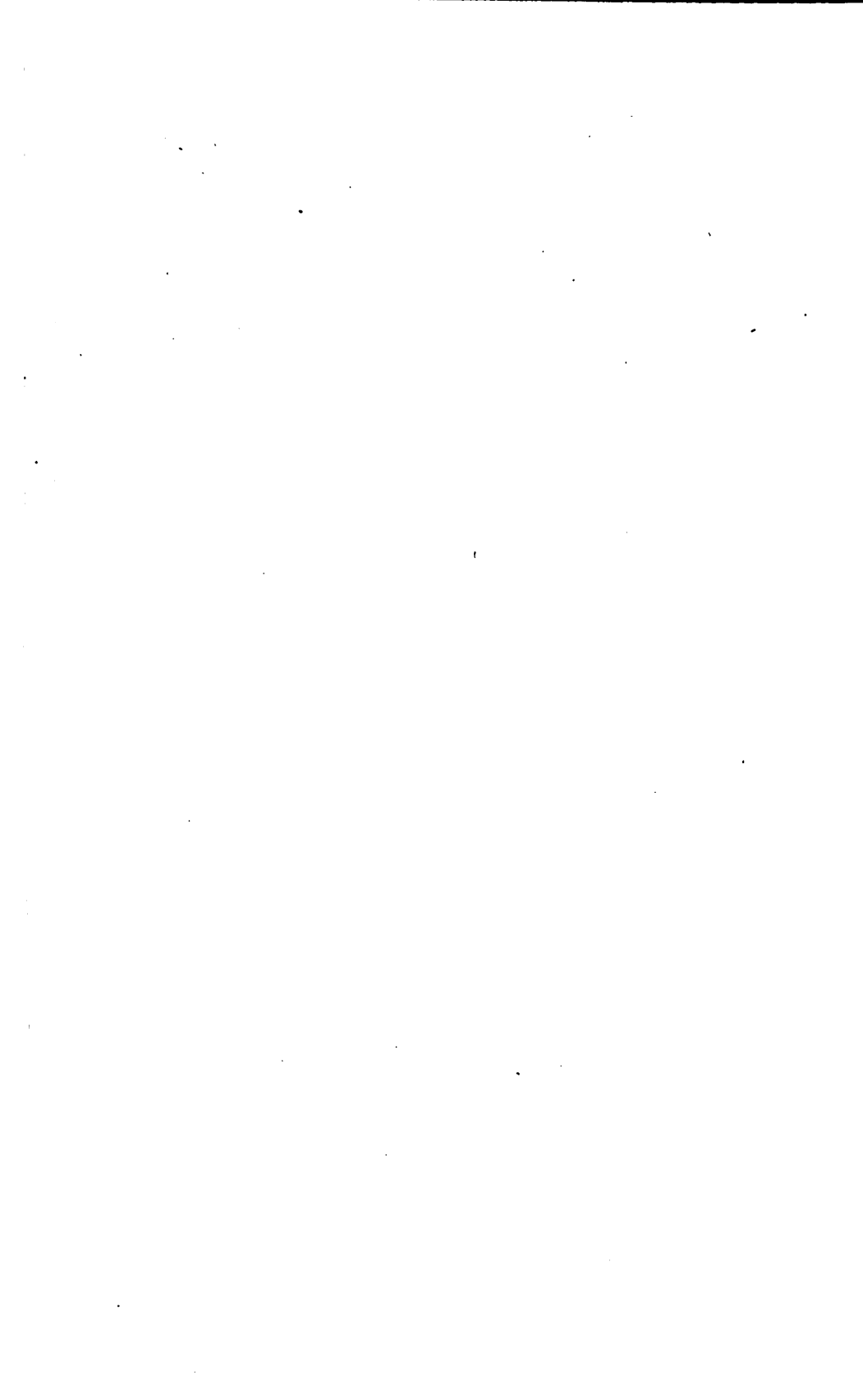














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